

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

ELEANOR CALHOUN

70 Crossman Avenue
Buffalo, New York 14211

Plaintiff,

**COMPLAINT IN A
CIVIL ACTION**

v.

Civil Action No.:

UNITED STATES OF AMERICA

Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

Defendant.

Plaintiff, ELEANOR CALHOUN, by her attorneys, SCHIFFMACHER CINELLI
ADOFF LLP, alleges for her complaint as follows:

PRELIMINARY STATEMENT

1. This is a civil action for economic and non-economic damages arising out of serious injuries sustained in a motor vehicle accident involving a United States Postal Service vehicle that occurred on March 13, 2021, on Eller Avenue at or near its intersection with Yonkers Avenue in Buffalo, New York.

2. As alleged more fully below, Defendant is liable for the negligent, reckless, and careless actions of the United States Postal Service employee which caused the subject accident and all subsequent serious injuries sustained by Plaintiff.

JURISDICTION AND VENUE

3. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1346(b) and 2675.

4. Venue is proper in this district pursuant to 28 U.S.C. § 1402(b) because Buffalo, New York is situated in this district and the events giving rise to the Complaint occurred in this district.

5. Venue is also proper in this district pursuant to 28 U.S.C. § 1402(b) because Plaintiff is and at all times material to this action was, an individual residing in this district.

THE PARTIES

6. Plaintiff is and at all times material to this action was, an individual residing in Buffalo, New York.

7. Defendant is the United States of America.

CONDITIONS PRECEDENT

8. Pursuant to 28 U.S.C. § 2675(a), Plaintiff timely presented her claim in writing to the United States Postal Service. The United States Postal Service failed to make final disposition of Plaintiff's claim within six months.

9. This Complaint has been made at a time after the United States Postal Service failed to make final disposition of Plaintiff's claim within the six months period set forth in 28 U.S.C. § 2675(a).

10. This claim does not fall within any of the exceptions listed in 28 U.S.C. § 2680.

FACTS

11. On March 13, 2021, while a passenger in a motor vehicle, Plaintiff was caused to suffer severe, serious, and permanent personal injuries when the vehicle she was occupying was struck by a mail delivery truck bearing U.S. Postal Service serial number 4314952, owned and operated by the United States Postal Service.

12. The accident occurred on Ellet Avenue at or near its intersection with Yonkers Avenue in Buffalo, New York.

13. The United States Postal Service agent, servant and/or employee operating said vehicle was acting within the scope of his employment at the time the accident occurred.

FEDERAL TORT CLAIMS ACT

14. This claim arises out of the negligent, careless, and reckless acts and/or omissions of an agent, servant and/or employee of the United States Postal Service.

15. At the time of the accident, the United States Postal Service employee was acting within the scope of his employment, operating a mail delivery truck bearing U.S. Postal Service serial number 4314952.

16. In causing the accident, the United States Postal Service employee breached his duty to exercise ordinary care in the operation of the United States Postal Service mail delivery truck.

17. Under the laws of the State of New York, a private person would be liable to Plaintiff for economic and non-economic damages caused by the negligent, careless, and reckless acts and/or omissions of said United States Postal Service employee.

18. Under 28 U.S.C. 2674, the United States is liable to Plaintiff for the economic and non-economic damages resulting from this collision.

DAMAGES

19. As a direct and proximate result of said United States Postal Service employee's negligence, carelessness, and recklessness, Plaintiff sustained "serious injuries" and economic loss greater than "basic economic loss" as those terms are defined in Article 51 of the New York State Insurance Law.

20. Plaintiff has suffered the following injuries and damages:

- a. Physical pain, suffering, and mental anguish in the past, present, and future;
- b. Loss of earning capacity in the past, present, and future;

- c. Permanent consequential limitation of use of a body organ or member;
- d. Significant limitation of use of a body function or system;
- e. A medically determined injury or impairment of a non-permanent nature which prevents the injured person from performing substantially all of the material acts which constitute such person's usual and customary daily activities for not less than ninety days during the one hundred eighty days immediately following the occurrence of the injury or impairment.
- f. Medical expenses in the past, present, and future.


RELIEF REQUESTED

WHEREFORE, Plaintiff Eleanor Calhoun requests that the Court enter judgment awarding monetary damages to Plaintiff in the amount of \$750,000.00, together with costs, pre- and post-judgment interest; and granting such further relief this Court may deem just and proper.

Plaintiff Eleanor Calhoun requests trial by jury.

DATED: Buffalo, New York
January 9, 2024

Respectfully submitted,



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